ment by the shipper of an additional charge, thus ruining plaintiff's business. *Held,* that the association and railroads were liable for damages sustained by plaintiff.

The discrimination against the plaintiff was unlawful, and as the association was a party to the illegal agreement, their liability is co-extensive with that of the railroads. It is a well established principle of law that a common carrier cannot make unjust discriminations either in granting carriage or in carrying for some at a less rate than for others. *McDuffee v. Ry. Co.,* 52 N. H. 430; *R. R. Co. v. Rinard,* 46 Ind. 293; *R. R. Co. v. Ervin,* 118 Ill. 250. But in many instances a discrimination has been sustained on the ground that it was not unreasonable. *Johnson v. R. R. Co.,* 16 Fla. 623; *R. R. Co. v. People,* 67 Ill. 11. But a railway company cannot charge one rate for delivering grain at a particular elevator in a city, and a higher rate for delivering at another elevator in the same city, and equally accessible. *Vincent v. Ry. Co.,* 49 Ill. 33. At common law a carrier is not bound to treat all with absolute equality. *Ry. Co. v. Gage,* 12 Gray 393; *Sargent v. R. R. Co.,* 115 Mass. 422; *Menacho v. Ward,* 27 Fed. 529; and it has been held that a company may discriminate in favor of persons shipping large quantities of freight. *R. R. Co. v. Forsaith,* 59 N. H. 122; *Nicholson v. Ry Co.,* 1 Nev. & Macn. 121; *contra, Scofield v. Ry. Co.,* 43 Ohio St. 571.

CONSTITUTIONAL LAW—EMINENT DOMAIN—FISHING RIGHTS.—ALBRIGHT V. PARK COMMISSION, 57 ATL. 398 (N. J.).—A statute providing that the right to take fish from inland lakes be acquired by eminent domain for public enjoyment, *held,* unconstitutional, such right not being one of use, but of mere pastime. Gummere, C. J., and Vroom, J., *dissenting.*

In this case the decision rests on the distinction between the right to acquire property for park purposes, which the State has, *Shoemaker v. U. S.,* 147 U. S. 282, for the benefit of the public at large, and the acquisition of property by the State for a limited benefit to a small number of people. It is usually considered a question for the legislature to determine whether the public benefit is sufficiently great to justify the exercise of eminent domain, *Water Co. v. Stanley,* 39 Hun. 428; *Com. v. Breed,* 4 Pick. 463; *State v. Morris Aque. Co.,* 46 N. J. L. 495, though the courts will always rectify a gross abuse of this power. *Buckingham v. Smith,* 10 Ohio 288; *Coster v. Water Co.,* 18 N. J. Eq. 64. And they will look with particular care that the use to which the property is to be put, be public, especially in the case of real property, *Heyward v. New York,* 8 Barb. 488; *Taylor v. Porter,* 4 Hill 149. Being a grant by the government, it would be repugnant to the Constitution for the State to violate a contract for other than public purposes.

CONSTITUTIONAL LAW—EXPORTS—TAXATION.—CORNELL V. COYNE, 24 SUP. CT. 383.—*Held,* that the same tax on cheese manufactured solely for exporting as is laid on other cheese, is not obnoxious to the constitutional provision forbidding a tax on exports. Fuller, C. J., and Harlan, J., *dissenting.*

In the dissenting opinion it is contended that as soon as an article is set aside for the purpose of exporting, it becomes an export within the meaning of the Constitution; that otherwise there is no way of preventing Congress from evading the Constitution by taxing exports before they are shipped.

This contention, however, is not supported by authority. The goods must be actually in process of transportation by the carrier before they become exports. *Coe v. Errol,* 116 U. S. 577; *Clarke v. Clarke,* 3 Wood. 408. In *Clark v. Monroe,* 60 Ga. 61, property was held to be exports, but there it was actually on board the carrier. The test is not whether the goods taxed are to be exported later, but whether they are taxed because they are going to be exported. *Turpin v. Burgess,* 117 U. S. 504. Goods still in the factory, though finished and ready for shipping, are a part of the general mass of taxable property and do not come under the head of exports. *Brown v. Houston,* 114 U. S. 622; *Myers v. Co. Commissioners,* 83 Md. 385; *Nelson Lumber Co. v. Loraine, 22* Fed. 54.

CONTRACTS—GOODS TO BE MANUFACTURED—SALE BY SAMPLE.—IDEAL WRENCH CO. V. GARVIN MACHINE CO., 87 N. Y. SUPP. 41.—The defendant contracted to manufacture a quantity of wrenches, equal in every respect to sample. The purchase price was paid and the goods were delivered and accepted. The wrenches proved to be defective, and were valueless for plaintiff's purposes. *Held,* that, as the contract was to manufacture and deliver and not a sale by sample, the acceptance of the goods precluded a recovery for damages sustained. Laughlin and Hatch, JJ., *dissenting.*

The decision is based upon the hypothesis that to constitute a sale by sample the goods must be *in esse* at the time of sale, a conclusion analogous to the New York doctrine relative to the statute of frauds. When the contract is to manufacture and deliver, as distinguished from a sale by sample, the court adopts the theory that an acceptance of the goods, with opportunity to examine, precludes a recovery for any defects that may exist, the docrine of *caveat emptor* governing. *Iron Co. v. Pope,* 108 N. Y. 232. In a sale by sample, however, there is a warranty surviving acceptance that the goods will substantially conform with the sample, the buyer having the privilege of rejecting them, or accepting and suing for damages. *Zabriski v. R. R. Co.,* 131 N. Y. 72; *Day v. Pool,* 52 N. Y. 416; *Leitch v. Manufacturing Co.,* 64 Minn. 434. This latter proposition, however, in *Briggs v. Hilton,* 99 N. Y. 517, was applied to an executory contract to manufacture, the court deciding that the existence of the goods was immaterial; and the recent case of *Henry v. Talcott,* 175 N. Y. 385, negatives the presumption that the goods must be *in esse* to constitute a sale by sample, holding that the question is one of fact for the jury. In elucidating their position as to the statute of frauds, the New York courts have freely acknowledged that it is continued "at the expense of sound principle," *Cooke v. Millard,* 65 N. Y. 352; and to extend the doctrine to questions outside of its original application would seem anomalous. In view of the prevalent custom of manufacturers to exhibit samples, contracting to manufacture goods in conformity thereto, and considering the underlying reason for exempting sales by samples from the doctrine of *caveat emptor,* it would appear that the application of the rule should not be made dependent upon the existence or non-existence of the subject matter at the time the agreement is made.

CORPORATIONS—FIDUCIARY RELATION OF PROMOTERS—RECOVERY OF SECRET PROFITS BY STOCKHOLDERS.—HUTCHINSON V. SIMPSON, 87 N. Y. SUPP. 369.—The promoters of a corporation to control malting establishments on which